

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3240

IN THE MATTER OF:

Served October 24, 1988

Application of MADHU SUDAN for a)
Certificate of Public Convenience)
and Necessity to Conduct Special)
and Charter Operations --)
Sightseeing Tours)

Case No. AP-88-26

By application filed July 1, 1988, Mr. Madhu Sudan, a sole proprietor, seeks authority to transport passengers in charter and special operations, over irregular routes, between points in the Metropolitan District, restricted to sightseeing tours. 1/

A public hearing was held on August 4, 1988, pursuant to Order No. 3194, served July 7, 1988, and incorporated herein by reference. The application was protested by V.I.P. Tours, WMATC Carrier No. 85; Scenic Sightseeing Tours, WMATC Carrier No. 92; Griffin M. Murphy trading as Maxi-Bus Tours, WMATC Carrier No. 93; Ernest Harrelson, WMATC Carrier No. 86; Richard W. Butler, WMATC Carrier No. 84; Arthur J. Thomas, WMATC Carrier No. 88; and Frank Lee, WMATC Carrier No. 113. Applicant testified on his own behalf and presented four witnesses. All protestants appeared at hearing. Protestants cross-examined applicant's witnesses; V.I.P. Tours and Scenic Sightseeing Tours presented evidence.

SUMMARY OF THE EVIDENCE

Mr. Sudan is a licensed taxicab driver and tour guide. He has operated a taxicab for eight years and has been a licensed tour guide for four years. Applicant proposes to offer four tours. Applicant's basic tour includes "indoor and outdoor views" of attractions described as follows: the White House, Capitol, Smithsonian, Bureau of Engraving and Printing, National History Building, Ford's Theatre, Washington Monument, Jefferson Memorial, Lincoln Memorial, and Viet Nam Memorial. The proposed rate for this tour is \$14.50 per person. For an additional \$8 per person, any equal number of buildings may be substituted if located in "the central business district of Washington, D.C., or the area bounded by the Capitol building on the East, the Jefferson Memorial on the South, the Lincoln Memorial on the West and the White House on the North." A third tour including all buildings on

1/ To the extent that this application could be interpreted to include transportation solely within the Commonwealth of Virginia, it was dismissed by Order No. 3194 pursuant to the Compact, Title II, Article XII, Section 1(b).

the basic tour plus Arlington National Cemetery is also proposed at a rate of \$14.50 per person. A separate tour of Mt. Vernon would be available at a proposed rate of \$20 per person. Applicant also plans to offer a customized tour originating in suburban Maryland and Virginia for \$40 per person. The customized tour would center around the clients' needs and schedules and would enable passengers to personally select the sites that they would like to visit from the options published in applicant's tariff. Charter service would be made available at a 20 percent discount for families of four or more, and for other groups of six or more. Mr. Sudan testified that special fares would be charged for children. However, the proposed tariff submitted by Mr. Sudan fails to list a different rate for children. The proposed tariff is silent as to the manner in which building substitutions are made in the event that an attraction is closed and whether entrance fees are included in the rates listed.

Applicant plans to conduct the proposed service in a new 15-passenger van equipped with air conditioning and a public address system. Mr. Sudan is an auto mechanic and would repair and maintain the vehicle. A preventive maintenance program consisting of daily cleaning of the vehicle and check of vehicle fluids (power steering, radiator, oil, transmission, and window washer) would be followed. Applicant plans to make frequent checks of the vehicle's lights, gauges, belts, and brake system. The vehicle would be driven by Mr. Sudan who testified that he has a clean driving record. Applicant plans to lease a vehicle for back-up purposes in the event that his primary vehicle needs repair. The applicant is also prepared to add to his fleet and hire additional drivers if demand dictates. Applicant would require that any prospective driver have a good driving record, familiarity with the Metropolitan District, and two years experience driving commercially.

Mr. Sudan expects to generate most of his business from hotels and corporations located in Montgomery County, MD, and Northern Virginia. However, he seeks authority to originate tours throughout the Metropolitan District including on The Mall, ^{2/} noting that there could be days when his vehicle would not be filled by passengers originating outside Washington, DC.

^{2/} "The Mall" refers to points in that part of the District of Columbia south of a line beginning at the junction of Constitution Avenue, N.W., and Rock Creek Parkway, N.W., thence along Constitution Avenue, N.W., to 17th Street, N.W., thence along 17th Street, N.W., to Pennsylvania Avenue, N.W., thence along Pennsylvania Avenue, N.W., to 10th Street, N.W., thence along 10th Street, N.W., to F Street, N.W., thence along F Street, N.W., to 9th Street, N.W., thence along 9th Street, N.W., to Pennsylvania Avenue, N.W., thence along Pennsylvania Avenue, N.W., to Constitution Avenue, N.W., thence along Constitution Avenue to its junction with 2nd Street, N.E.

Applicant submitted a revised balance sheet dated June 1, 1988, showing current assets of \$36,000 and fixed assets, after allowance for depreciation, of \$51,050. Current liabilities are listed at \$560 with \$53,600 in long-term liabilities consisting of a mortgage on applicant's garage/shop and a \$30,000 line of credit. Proprietor's equity amounts to \$32,890. Applicant filed an executed promissory note and agreement which provides (a) for the loan to applicant of \$30,000 by Dr. Bhajan Singh Badwal upon issuance of a certificate in this proceeding, and (b) for repayment over a four year period, with repayment to begin two years from the date of the loan at an interest rate of 12 percent. By direction of the presiding Administrative Law Judge, applicant filed an affidavit of Dr. Bhajan Singh Badwal which attests to the availability of \$30,000 to applicant if WMATC authority is granted. The affidavit evinces Dr. Badwal's willingness to place \$30,000 in an escrow account if requested to do so by the Commission. A projected operating statement for the first 12 months of operations estimates WMATC operating income will be \$44,000 with total gross income of \$57,000. Operating expenses for the same time period are projected at \$40,700 with net income, after allowance for depreciation and taxes, of \$3,890.

Ms. Lisa Hester, front office manager at the Gaithersburg Marriott testified in support of the application on behalf of that hotel. Ms. Hester's responsibilities include arranging transportation for hotel guests. The hotel is not currently served by a sightseeing carrier. Guests who wish to take a sightseeing tour must either take a taxi 20 miles into the District at a one-way cost of approximately \$30 or take a taxi ride to the nearest metro station at significant costs. These additional transportation expenses must be added to the cost of the sightseeing service upon arrival at a sightseeing pick-up point. Ms. Hester is therefore interested in door-to-door service for hotel guests. Ms. Hester receives requests for sightseeing services three to four times per week from businessmen and four to five times a month from small families. Most of the requests relate to sightseeing service to points of interest in the District of Columbia, with some also indicating a desire to see Arlington Cemetery. The witness stated that there are approximately 10 other hotels located in the vicinity of the Gaithersburg Marriott which need door-to-door sightseeing service. The witness projects an increase of corporate and hotel growth in the area which would result in a greater number of visitors staying in the Gaithersburg area.

Ms. Jill Bralove is co-owner of More Than Travel, a travel agency, in Gaithersburg, MD. Ms. Bralove is not aware of any sightseeing services that are available in the Gaithersburg community and has not been approached by any existing carriers desiring to originate business in the area. Ms. Bralove receives walk-in requests for local sightseeing services from two to three people per week. She receives requests for such service from corporate clients on the average of twice a month. The witness does not generally make arrangements for local sightseeing but would be willing to promote applicant's service with the understanding that a commission would be paid. She has no expectation of a need for trips that originate in Prince George's County, MD, or on The Mall.

Ms. M. Ellen Bishel is a realtor in Leesburg, VA, who has frequent contact with individuals and companies that are relocating to the metropolitan area and often request information about sightseeing services. Many of her clients stay in hotels that do not offer sightseeing services. The hotels are located in Fairfax and Arlington Counties, VA, or Montgomery County, MD. She believes that the door-to-door service proposed by applicant would be of interest to her clients.

A representative of the British Embassy, Ms. Pat Wilson, supports the application. Ms. Wilson is the Embassy's community liaison officer. Her responsibilities include tending to the needs of visitors to the Embassy and British families who are reassigned to the United States. Her duties often include addressing requests to tour the area. No sightseeing services currently originate from the Embassy. The witness has never been approached by a carrier with the idea of providing door-to-door service. Ms. Wilson feels that the personalized service proposed by applicant would meet the needs of Embassy visitors who often come as individuals or in small groups and operate on very tight time schedules. If Mr. Sudan is granted WMATC authority, the witness intends to publish notice of the service in an Embassy bulletin which is distributed to the staff of the British Embassy and other consulates, the offices of the Department of Defense in Crystal City, VA, the Pentagon, and the World Bank. Ms. Wilson estimates that an average of 50 people a month would require applicant's service. Ms. Wilson's referrals would not be limited to persons solely related to the Embassy; she also receives inquiries on a regular basis from people seeking general tourist information. The witness does not expect to make referrals for trips that originate in Prince George's County or on The Mall. Most of the trip origination points would be in Washington, DC; Arlington and Fairfax, VA; and Montgomery County, MD.

All of the protestants in the case are authorized to transport passengers in special operations, in lectured sightseeing tours, between points in a specified portion of the District of Columbia that encompasses The Mall. If the authority sought in this application were granted, it would encompass the same special operations authority that protestants hold.

Mr. Jarvis Gorham, vice president of Scenic Sightseeing Tours, testified in opposition to the application. His firm operates two vans and performs sightseeing service generally between points in the Mall area of the District of Columbia, Arlington Cemetery, and Mount Vernon, VA. Mr. Gorham testified that competition among existing "Mall" carriers is very steep and that a new entrant into the market would compound the situation. He is of the view that The Mall carriers would have difficulty dealing with increased competition.

Jimmie L. Davenport, general partner of V.I.P. Tours, testified in opposition to the application. In addition to its authority to originate tours on The Mall, V.I.P. is authorized to originate tours at the Day's Inn Capital Centre in Prince George's County, MD. It operates four vehicles. Mr. Davenport is the president of the Washington Tour Guide Association and also appeared as a representative

of the group. Mr. Davenport testified that The Mall is adequately served by existing WMATC carriers. He stated that tourist traffic on The Mall is not adequate to enable existing carriers to operate at full capacity.

DISCUSSION AND CONCLUSIONS

This application is governed by Title II, Article XII, Section 4(b) of the Compact which requires that an applicant prove he is fit, willing and able to perform the proposed transportation properly and to conform to the provisions of the Compact and the Commission's rules, regulations, and requirements thereunder. Section 4(b) further provides that an applicant prove that the proposed service is required by the public convenience and necessity. Based on a review of the entire record in this case, we find that Mr. Sudan has sustained the burden of proof imposed by the Compact as to certain special operations but not as to charter operations.

Mr. Sudan is an experienced taxicab driver and tour guide who is familiar with the tourist attractions that are located throughout the Metropolitan District. Applicant would commence operations with one new vehicle and has made provisions to lease a vehicle in the event that his primary vehicle becomes inoperable. Mr. Sudan plans to add equipment and drivers as required. The vehicle would be regularly inspected and maintained by applicant. Applicant's finances, supported by a readily available line of credit, indicate adequate funds to sustain WMATC operations. For these reasons, we find the applicant financially and operationally fit. Moreover, the record indicates that Mr. Sudan is familiar with the Compact and the Commission's rules and regulations and is willing to comply with them. Therefore, we find applicant fit as to compliance.

The Commission has relied on the criteria set forth in Pan-American Bus Lines Operations, 1 MCC 190, 203 (1936), to determine whether an applicant has satisfied his burden of proving that the public convenience and necessity require the proposed service. The test set forth in Pan-American consists of three parts:

. . . whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Applicant proposes to offer personalized sightseeing tours in a 15-passenger van and presented four witnesses who testified that there is a public need for sightseeing service in special operations between points in Montgomery County, MD; Washington, DC; and Northern Virginia. The record failed to show a public need for any charter sightseeing

services. Additionally, there is no evidence showing any need for applicant's proposed service, in special operations, from or to points in Prince George's County, MD.

None of the witnesses spoke specifically to a transportation need that would require charter bookings for service within the Metropolitan District. The testimony highlighted the need for sightseeing services for individuals and families who would be interested in the proposed special operations of the applicant. All of the service for which any need was shown can be conducted pursuant to special operations authority. Even the fares proposed in applicant's tariff are based on a per-capita rate structure. Accordingly, in the absence of evidence showing a public need for the proposed charter operations, that portion of the application must be denied. On the other hand, the evidence warrants authorization of special operations (sightseeing) throughout that portion of Northern Virginia that lies within the Metropolitan District; Montgomery County, MD; and the District of Columbia with certain restrictions involving the geographic area known as The Mall. In this regard we note that all but one of applicant's public witnesses specifically testified that they had no need for transportation that originated in the so called Mall area. Moreover, as the testimony of protestants indicates, that area is abundantly served.

With this restriction against originating service on The Mall, the concerns of the protestants in this case should be alleviated. There is no evidence in the record that would support a claim that the proposed operations of the applicant, as restricted, would endanger or impair the operations of any existing carriers contrary to the public interest.

Based upon the testimony of the witnesses, the application, and evidence submitted in this matter, we find that the proposed service, as restricted, will support a useful public purpose for which there is a demonstrated need and which cannot be served as well by existing carriers.

We direct that the proposed tariff be revised to specify whether admission fees are included in charges, to indicate the rates for children, and to delete all references to charter operations.

THEREFORE, IT IS ORDERED:

1. That Madhu Sudan, is conditionally granted authority, contingent upon compliance with the terms of this order, to transport passengers in special operations between points in Washington, DC; Montgomery County, MD; and that part of the Commonwealth of Virginia that lies within the Metropolitan District, restricted to lectured sightseeing tours, further restricted to transportation in vehicles with a manufacturer's designed seating-capacity of 15 persons or less, including the driver, further restricted against originating such transportation on The Mall, and further restricted against transportation solely within the Commonwealth of Virginia.

2. That in all other respects the application of Madhu Sudan is hereby denied.

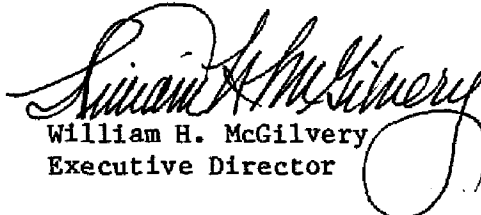
3. That Madhu Sudan is hereby directed to file the following: (1) two copies of his revised WMATC Tariff No. 1; (2) an equipment list specifying make, model, serial number, vehicle identification number, and license plate number for each vehicle to be used in WMATC operations, (3) a certificate of insurance in accordance with Commission Regulation No. 62; and (4) an affidavit of identification of vehicles pursuant to Regulation No. 67 for which purpose WMATC No. 145 is hereby assigned.

4. That Madhu Sudan is hereby assessed \$4.00 pursuant to the Compact, Title II, Article XII, Section 19 of the Compact and is directed to deliver said amount to the office of the Commission.

5. That unless Madhu Sudan complies with the requirements of the preceding paragraphs within 30 days from the service date of this order, or such additional time as the Commission may direct or allow, the grant of authority contained herein shall be void in its entirety upon the expiration of the said compliance time.

6. That upon compliance with the conditions set forth in the preceding paragraphs, a certificate of public convenience and necessity will be issued to Madhu Sudan, in the form and as worded in the Appendix to this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS, WORTHY, SCHIFTER AND SHANNON:


William H. McGilvery
Executive Director

NO. 145

MADHU SUDAN

DAMASCUS, MARYLAND

By Order No. 3240 of the Washington Metropolitan Area Transit Commission issued October 24, 1988;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order No. 3240;

THEREFORE, IT IS ORDERED that the said carrier be, and it is hereby, granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

SPECIAL OPERATIONS, transporting passengers between points in Washington, DC; Montgomery County, MD; and that portion of the Commonwealth of Virginia that lies within the Metropolitan District;

RESTRICTED to lectured sightseeing tours;

FURTHER RESTRICTED against originating passengers from points in that part of the District of Columbia south of a line beginning at the junction of Constitution Avenue, N.W., and Rock Creek Parkway, N.W., thence along Constitution Avenue, N.W., to 17th Street, N.W., thence along 17th Street, N.W., to Pennsylvania Avenue, N.W., thence along Pennsylvania Avenue, N.W., to 10th Street, N.W., thence along 10th Street, N.W., to F Street, N.W., thence along F Street, N.W., to 9th Street, N.W., thence along 9th Street, N.W., to Pennsylvania Avenue, N.W., thence along Pennsylvania Avenue, N.W., to Constitution Avenue, N.W., thence along Constitution Avenue to its junction with 2nd Street, N.E;

FURTHER RESTRICTED to the transportation of passengers in vehicles with a manufacturer's designed seating capacity of 15 persons or less (including the driver);

AND FURTHER RESTRICTED against transportation solely within the Commonwealth of Virginia.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous, and adequate service to the public in pursuance of the authority granted herein, and that failure to do so shall constitute sufficient grounds for suspension, change, or revocation of the certificate.